

# **INITIAL STATEMENT OF REASONS**

## **Habitat Conservation Fund Program**

### **WETLANDS APPLICATION GUIDE**

California Fish and Game Code, Sections 2720 through 2729, and Sections 2780, 2781, and 2785-2799.6

California Government Code Sections 7550 through 7550.6

California Public Resources Code, Sections 5900 through 5903, Section 5910, Section 5917 and 5919, Section 5929, Section 31011, Section 33216, and Division 23, commencing with Section 33000

Tobacco Tax and Health Protection Act of 1988

#### **SPECIFIC PURPOSE OF THE REGULATION**

The purpose of the proposed regulation is to implement, interpret, and make specific California Fish and Game (DFG) Code, Sections 2720 through 2729, and Sections 2780, 2781, and 2785 – 2799.6. Specifically, it will establish California Department of Parks and Recreation (Department)'s eligibility, application, grant selection and grant administration requirements for the Habitat Conservation Fund (HCF) Program.

#### **NECESSITY**

The HCF Program allocates approximately \$2 million per year to the Department to provide grants to local entities to protect fish, wildlife, and native plant resources, to acquire or develop wildlife corridors and trails, and to provide for nature interpretation programs and other programs which bring urban residents into park and wildlife areas. The California Wildlife Protection Act of 1990, Fish and Game Code, Chapter 9, commencing with Section 2799.5 requires that "reasonable public access to lands...be provided except where direct access may interfere with habitat protection". The Wildlife Protection Act also defines eligible applicants, match rate, eligible project categories, and the funding distribution between local government and state agencies.

The Department initiated an extensive public review and comment process of the Habitat Conservation Fund Program Procedural Guide, Revised May 2007. This process included in-person public focus groups held in Northern and Southern California. The Department completed a 30 day public comment period in the winter of 2007 to allow the public to comment on the proposed amendment to the existing regulations.

To further assist applicants, the Department separated the May 2007 procedural guide into eight individual guides. Seven application guides represent each of the seven funding categories. The eighth guide serves as the HCF Grant Administration Guide.

The following information is based on the HCF Wetlands Application Guide Draft dated March 31, 2010. This draft incorporates comments from wildlife and outdoor recreation specialists obtained during six focus group meetings held throughout California. Additionally, the Department incorporated feedback obtained from potential applicants during six public technical assistance workshops.

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### **HABITAT CONSERVATION FUND PROGRAM (HCF) DESCRIPTION – EXECUTIVE SUMMARY**

#### *Competitive Program Intent*

The Department developed this section to summarize the intent of the Habitat Conservation Fund Program, cite the original State law, (from which the program originated), and provide general information about program funding mechanisms.

The information in this section is based on State law (California Fish and Game Code, Sections 2720 through 2729, and Sections 2780, 2781, and 2785-2799.6). The Department relays the program information in one uniform manner to potential applicants.

#### *Annual Allocation*

This section states the exact allocation to the Department each fiscal year, based on State law.

#### *Application Filing Deadline*

This section provides for an annual due date for local agencies applying for HCF funds. The Department established this deadline to notify applicants when applications are due.

#### *Grant Performance Period*

This section explains the grant performance period and clarifies when costs can be incurred to qualify for reimbursement. The applicant, upon award, will have a 5-year time frame for all projects selected for funding, which begins upon appropriation in the Budget Act on July 1 of each year.

#### *Maximum and Minimum Grant Request Amounts*

This section clarifies the recommended amount the applicants should request. However, there are no maximum or minimum grant amounts provided for in State Law.

#### *Required Match*

This section states the State law required dollar-for-dollar match of the total project costs.

#### *Project Categories*

This section states that seven different eligible project categories are available with separate application guides. All categories are eligible for funding each fiscal year.

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### **HABITAT CONSERVATION FUND PROGRAM – WETLANDS INFORMATION**

#### *Eligible Applicants*

This Section clarifies what types of entities are eligible to request HCF grant funding, based on State law.

#### *Eligible Projects*

This section clarifies the types of projects eligible for HCF funding, based on State guidance. Based on the Department's administrative experience, this section assists the applicant to make an informed decision on whether to propose a project for funding.

#### *Ineligible Projects*

This section clarifies the types of projects that are not eligible for HCF funding, based on State guidance.

#### *HCF Program Process*

The flow chart clarifies the HCF Grant process and projected timeline of the project submittal, approval, and award process. All awarded projects' contracts must be encumbered within three years of the appropriation date. Projects must be completed within 5 years of that same date.

### **APPLICATION PROCESS**

#### *Instructions for Submitting the Application Packet*

This section provides preliminary instructions for preparing an application packet. The guidance in this section was created in response to frequently asked questions from focus group, public hearing, and technical assistance workshop participants. The explanation outlining the application deadline, letters of support and the number of copies to submit and specific format ensures that applicants have an understanding of how to submit information for consideration of funding. The Department established this section to provide consistency and normalization for the information requested by all applicants. An Application Checklist is provided for the applicants' benefit.

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### **Application Packet Requirement, Checklist and Discussion**

The following discusses the need and origination of each item required in the Application packet: If an item is not applicable to the project, the applicant shall respond with "N/A" (not applicable) with an explanation as to why.

#### *Application Form*

The Department requires this form to identify who the applicant is (eligibility), where the proposed project is located, and how much funding is requested. The State requires applicants to demonstrate ownership of property; the application form enables the Department to verify this requirement.

#### *Authorizing Resolution*

The authorizing resolution enables the applicant's governing body to certify that it has approved the submittal of an application for the project, and establishes an authorized representative to act on behalf of the applicant during the grant process. The provisions contained in the resolution originate from State law. The resolution form provides the means to ensure that the applicant has reviewed the grant application and grant contract and agrees to the language contained within both documents. A sample form is provided.

#### *Grant Scope/Cost Estimate Form and Match Instructions*

This section provides the applicant information and guidance regarding the following items: establishing a grant scope, developing a concept-level cost estimate and providing required match information. The applicant needs to properly identify expected grant deliverables for reimbursements and project completion. The grant scope/cost estimate form enables the Department to evaluate how the grant funds and match are proposed to be spent and if the proposed costs are eligible. In addition, the grant scope/cost estimate form enables the Department to determine if the match sources are eligible and sufficient funds are available to complete the project. The grant scope/cost estimate form provides a means for the applicant to identify the total project costs and the percentage of costs dedicated to acquisition, restoration, or enhancement and preliminary engineering and design costs. The Match Requirement sections provide instruction regarding eligible and ineligible match sources, rules regarding match and the method for calculating the grant amount and match amount based on the total project cost.

#### *Land Tenure*

The State requires the applicant to have adequate land tenure. This section enables the applicant to determine if it has land tenure. Land tenure requirements provide assurance to the Department that the applicant/grantee has the authority to construct and operate the project for public outdoor recreation use. Land tenure agreements/assurances must be in effect for the length of the project performance period, or until the entire grant funds have been expended and the project is complete.

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This form allows the Department to evaluate the applicant's ownership and/or access to the property to be improved or developed and provide assurance that the applicant/grantee has the authority to construct and operate the project for public use.

- Type of Agreement - This section determines the type of agreement submitted by the applicant.
- Parties to the Signed Agreement - This section identifies the parties involved in the agreement.
- Term of the Agreement - This section provides the term length of the agreement. The term can be ten or twenty years pending the amount of funds requested by the applicant.
- Renewal Clause - This section describes the ability of the applicant and grantee to renew the agreement beyond the original term.
- Termination (Revocability) - This section describes the type of termination clauses that are acceptable, which allow the land owner to revoke the agreement.
- Site Control Roles and Responsibilities - This section must provide applicant authority to construct, operate, and maintain the project in accordance with the contract provisions.
- Roles and Responsibilities - This section must provide authority to proceed with the construction of the project and or gives the applicant permission to operate the project site.

#### California Environmental Quality Act (CEQA)

This section explains what the applicant must provide in order to demonstrate that the project complies with CEQA. CEQA is a project requirement based on State law. The CEQA Certification Form provided certifies that the lead agency has determined that it has complied with CEQA for the proposed project. The Department provides a copy of the form for applicant use.

#### Project Completion Schedule

The Department requires the applicant to provide a document with key milestones for the proposed project. This document assists the Department in determining the viability of the proposed project and if the applicant can complete all the expected deliverables within the grant's time constraints.

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#### Site Plan

The Department requires the applicant to provide a site plan because it provides a visual depiction of the proposed project and public access for evaluation purposes. Site plans also enable the Department to further verify project eligibility.

#### Topographic Map

The Department needs the topographic map to assess the proposed project in relation to surrounding wildlife areas, creeks, wetlands and other features including archeological sites, existing roads and trails.

#### Project Location Map

This map provides visual information about the surrounding project site area for evaluation purposes, and enables the Department to locate the property for the purpose of site inspections.

#### Acquisition Schedule Form

This form enables the applicant to provide a timeline when the applicant intends to purchase the property, or a permanent easement, that enables the applicant to obtain permanent rights to use the property for the purposes of the project. Applicants must demonstrate 100% ability to fund the project because the State requires committed match for HCF funds. The Department developed the Acquisition Schedule and Acquisition Map to enable the applicant to identify the acquisition location on a map, provide a description of the acquisition, provide an explanation of applicant funds, and provide the Department with a consistent format to verify the acquisition, eligibility and project funding.

#### County Assessor's Parcel Map and Willing Seller Letter

The parcel map enables the Department to evaluate the proposed acquisitions and determine if the map identifies the property location correctly, provides information as to when the grantee expects to purchase the property and the purchase price, and that confirms the property is for sale.

#### Project Summary

The Department developed the project summary application item as a result of potential applicant feedback expressed during the focus group process. Applicants requested a means to explain the overall vision for the project and the project's merits. While not scored, the Department requires a project summary to conduct a more thorough comparative analysis of all project application packages submitted.

#### Project Proposal

The explanation outlining the limit of the combined criteria responses to 15 pages, 8 ½" x 11" paper, single-sided, double-spaced, with 12-point font ensures that applicants have a consistent understanding of how much information they can provide when responding. The Department established this page limit to equalize the volume of content provided by all applicants.

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#### *Leases or Agreements*

The Department requires applicants to list other leases and agreements pertinent to the project so that application reviewer(s) can determine if any such agreements might jeopardize the project.

#### *Required Regulatory Permits*

This requirement ensures that the applicant has considered special permits which could impact or delay the project, and also enables the application reviewer(s) to identify potential issues.

#### *Land Management Plan*

State law requires a description of the management practices for those project lands that were previously acquired with HCF funds. The plan should discuss plans to reduce possible conflicts with neighboring land use and landowners.

#### *Photos of the Project Site*

This requirement provides visuals of the project site to give the application reviewer(s) a photographic means in which to become familiar with the proposed project.

#### *Conservation Corps Involvement Instructions and Form*

Conservation Corps Involvement in HCF projects is stated in the California Wildlife Protection Act of 1990. Applicants are required to use Corps services to the extent practicable. This form enables applicants to determine if such service is practicable. This form also enables the Department to evaluate if the applicant made a concerted effort to comply with State Law.

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### PROJECT SELECTION CRITERIA

#### Project Proposal Instructions

The project proposal instructions provide assistance in responding to the scoring criteria, which serves as an assessment tool. An explanation is provided outlining the limit of the combined criteria responses to 15 pages, 8 ½" x 11" paper, single-sided, double-spaced, with 12-point font, which ensures that applicants have a consistent understanding of how much information they can provide when responding. The Department established this page limit in order to equalize the volume of content provided by all applicants.

#### **Scoring Rubric – Ranking Point System:**

The project proposal scoring serves as an assessment tool, which enables the Department to assess the project's adherence to the grant requirements, in addition to the project's merits, as explained through the applicant's responses to the criteria. These assessments, with scores assigned to the criteria, enable the Department to rank projects and determine recommendations for funding.

These criteria were developed in accordance with California Wildlife Protection Act of 1990, Fish and Game Code Chapter 9. The wording of the criteria and the specific point value of each of these criteria reflect input gathered through public meetings and habitat specialist interviews.

Specifically, the Department developed the HCF scoring system through focus group and public hearing participant feedback and DFG input. Focus group feedback confirmed the Department's understanding that a total of 100 points (for all of the criteria collectively) is a common and suitable standard for competitive grant program scoring totals.

The breakdown in the 100 point scoring system reflects the emphasis provided by State law, Department expertise, State Wildlife Biologists, and the public input process. Criteria that contain greater point values reflect the higher priorities based on State law, Department expertise, State Fish and Game Biologists, and public input. Criteria that contain fewer point values reflect the lower priorities based on federal and State law, Department expertise, State Fish and Game Biologists, and the public input process.

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The following explains the point breakdown balance in the scoring system.

15 Points: The Department established 15 points for the highest valued elements desired and required for the proposed project. These 15 point criteria have the highest value because they represent the core elements of the wetlands project proposal: the threat to the wetlands, and the applicant capacity (applicant's readiness to provide for all aspects of an integrated project management process).

10 Points: The Department established 10 points for the second highest valued elements desired and required for the proposed project. These criteria have the second highest value because they represent secondary core elements for the wetlands project proposal: site access, stakeholder's involvement (in planning and developing the project), species presence, invasive plant species, habitat extent, and environmental elements that are currently present or will be present by project completion.

5 Points: The Department established 5 points for the third highest valued elements desired for the proposed project. These criteria represent non-core or non-secondary core trail wetland elements that contribute to the merits of the wetlands project proposal: conservation plan (which show a certified planning effort and a high priority need), and the legislatively-mandated conservation corps involvement (where practicable).

## **Project Proposal**

### Introduction

This section allows the Department to evaluate competing grant applications. Also, this section provides a reminder to all potential applicants that all projects are competing for approximately \$2 million dollars available annually and there are a total of 100 points possible for each application. An overview is provided to show the distribution of points.

- Criteria #1 – Threat (15 points)
- Criteria #2 – Site Access (10 points)
- Criteria #3 – Stakeholders (10 points)
- Criteria #4 – Applicant Capacity (15 points)
- Criteria #5 – Species Presence (10 points)
- Criteria #6 – Invasive Plant Species (10 points)
- Criteria #7 – Habitat Extent (10 points)
- Criteria #8 – Environmental Elements (10 points)
- Criteria #9 – Conservation Plan (5 points)
- Criteria #10 – Conservation Corps Involvement (5 points)

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Criterion #1-Threat: This criterion is weighted 15 points as a core element of the wetlands proposal because the HCF program core purpose is to fund projects where a significant need for wetlands exists. The applicant must describe any existing or potential harm or danger to the proposed project site and the consequences if the proposed acquisition, enhancement or restoration project cannot occur.

Criterion # 2 – Site Access: This criterion originates from the HCF Program legislation, which requires that the public should have access to the project sites except when that access may interfere with habitat protection. This criterion is weighted 10 points as a secondary core wetlands element because it encourages the applicant to consider wetlands projects that provide either direct or secondary access (such as mass transportation, bike lanes, or trails). The applicant is required to describe its plans for future access that will occur after project completion.

Criteria #3 – Stakeholders: This criterion provides the opportunity for the applicant to show its efforts to involve the broadest representation of stakeholders, potential users, public agency partners, and non-profit partners in the project planning and implementation process. This criterion enables the Department to assess the applicant's public involvement efforts. This criterion is weighted 10 points as a secondary core element that contributes to the merits of the project proposal because it enables the Department to evaluate the applicant's inclusion of the public in aspects of the project.

Criteria #4 – Applicant Capacity: This criterion discusses the applicant's readiness to provide for an integrated project management process, including project planning and monitoring. In addition to the information provided in this criterion, the Department will consider the applicant's performance history with grants management as part of the project selection process. This criterion is weighted 15 points as a core wetlands element, because it enables the Department to evaluate the applicant's project management abilities, including the ability to design the wetlands enhancement or restoration project to maximize sustainability.

Criteria #5 - Species Presence: This criterion enables the Department to evaluate the proposed project site's variety and occurrence of DFG special animals or special plants that use the land. The applicant responds to either 5A or 5B. The first option of this criterion directs the applicant to identify the variety and occurrence of DFG special animals or special plants that presently exist on or near the project site. The second option directs applicants to identify the variety and occurrence of DFG special animals or special plants that will exist on or near the project site at project completion. This criterion is weighted 10 points as a secondary core wetlands element because it enables the Department to evaluate how many target species will be on or near the project site for reproduction, wintering, migration or for other critical life history stages.

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Criteria #6 – Invasive Plant Species: The applicant responds to either 6A or 6B. This criterion enables the applicant to demonstrate the significance of the invasive non-native plant species' impact on the project site. For acquisition projects (6A), the Department needs to determine the non-native plant species' impact on the project site's current or potential value. For enhancement or restoration projects (6B), the Department needs to determine what type of prevention and control activities will be implemented. This criterion is weighted 10 points as a secondary core wetlands element that contributes to the merits of the proposed wetland acquisition, enhancement or restoration efforts, because it allows the Department to evaluate the effective containment efforts of the invading invasive plant species and the long-term goals and objectives of continued prevention.

Criteria #7 – Habitat Extent: This criterion enables the applicant to describe how many acres of wetlands and other types of habitats that will result on the site, and what percentage of project land will be in native wetland types at project completion. This criterion is weighted 10 points as a secondary core element of the wetlands improvement proposal because it enables the Department to evaluate wetlands projects that will result in a wetlands environment that covers a majority of the proposed project site.

Criteria #8 – Environmental Elements: This criterion enables the applicant to describe the specific environmental element(s) that are currently at the project site, or will exist at project completion. This criterion is weighted 10 points as a secondary core element of the wetlands project proposal, because it allows the Department to evaluate an optimal wetlands environment that includes no significant barriers that prevent flooding and has adjacent land uses that minimize the risks to the wetlands area.

Criteria #9 – Conservation Plan: This criterion originates from the HCF Program legislation. The legislation requires that the project proposal shall be accompanied by certification from the applicant that the project for which the grant is applied is consistent with a park and recreation plan, an applicable city or county general plan, or a district plan, and will satisfy a high priority need. This criterion is weighted 5 points as a non-core or non-secondary wetlands element desired for the proposed project because it enables the Department to evaluate the project site's priority in existing conservation plan(s).

Criteria #10 – Conservation Corps Involvement: This criterion enables the applicant to describe the California Conservation Corps (C.C.C.) or Certified Conservation Corp's (Cert. Corps) involvement in the project, as stated in the California Wildlife Protection Act of 1990. This criterion is weighted 5 points as a non-core or non-secondary core wetlands element that contributes to the merits of the proposed project because it enables the Department to evaluate the applicant's use of the youth conservation or service corps on the project, if applicable (measured effort to be in compliance with State law).

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#### **ELIGIBLE COSTS**

##### Eligible Costs Charts

This section provides clarity and guidance about how the grant funds and the required match may be spent. The section provides rules and examples of acquisition costs, or pre-construction and construction costs (for enhancement or restoration projects). There is also a chart on ineligible costs that cannot be charged to the grant. Due to years of experience with project administration and extensive public input, the Department determined that non-construction costs capped at 25% of the grant amount provide an appropriate balance between the public's interest in gaining benefit from capital projects and the grantee's ability to complete capital projects which encompass non-construction costs. This cap reflects the Department's desire to ensure that the grantee incorporates the majority of the grant funds into the capital portion of the project. At the same time, the Department understands that pre-construction costs are an integral part of capital projects.

#### **DEFINITIONS**

The definitions section provides the meanings of capitalized words and terms found in the Wetlands Application Guide. These meanings are necessary to ensure consistent understanding of the HCF Wetlands program and grant administration terms. The words and definitions found in this section originate from federal or State laws.